

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

SERTA SIMMONS BEDDING, LLC, et al.,

Debtors.

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Chapter 11

Case No. 23-90020 (DRJ)

(Jointly Administered)

**SERTA SIMMONS BEDDING, LLC, INVESCO
SENIOR SECURED MANAGEMENT, INC.,
CREDIT SUISSE ASSET MANAGEMENT, LLC,
BOSTON MANAGEMENT AND RESEARCH,
EATON VANCE MANAGEMENT, AND BARINGS
LLC,**

Plaintiffs,

v.

**AG CENTRE STREET PARTNERSHIP L.P., AG
CREDIT SOLUTIONS NON-ECI MASTER FUND,
L.P., AG SF MASTER (L), L.P., AG SUPER FUND
MASTER, L.P., SILVER OAK CAPITAL, L.L.C.,
ASCRIBE III INVESTMENTS, LLC, COLUMBIA
CENT CLO 21 LIMITED, COLUMBIA CENT CLO
27 LIMITED, COLUMBIA FLOATING RATE
INCOME FUND, A SERIES OF COLUMBIA
FUNDS SERIES TRUST II, COLUMBIA
STRATEGIC INCOME FUND, A SERIES OF
COLUMBIA FUNDS SERIES TRUST I,
CONTRARIAN CAPITAL FUND I, L.P.,
CONTRARIAN CENTRE STREET
PARTNERSHIP, L.P., CONTRARIAN
DISTRESSED DEBT FUND, L.P., GAMUT
CAPITAL SSB, LLC, LCM XXII LTD., LCM XXIII
LTD., LCM XXIV LTD., LCM XXV LTD., LCM 26
LTD., LCM 27 LTD., LCM 28 LTD., NORTH STAR
DEBT HOLDINGS, L.P., SHACKLETON 2013- III
CLO, LTD., SHACKLETON 2013-IV-R CLO, LTD.,
SHACKLETON 2014-V-R CLO, LTD.,
SHACKLETON 2015-VII-R CLO, LTD.,
SHACKLETON 2017-XI CLO, LTD., Z CAPITAL
CREDIT PARTNERS CLO 2018-1 LTD., AND Z
CAPITAL CREDIT PARTNERS CLO 2019-1 LTD.**

Defendants.

Adversary No. 23-09001

**SERTA SIMMONS BEDDING, LLC’S RESPONSE TO THE
DROP DOWN GROUP DEFENDANTS’ ADDITIONAL MATERIAL FACTS
INCLUDED IN THE COUNTERSTATEMENT OF CONTROVERTED FACTS**

Plaintiff Serta Simmons Bedding, LLC (the “**Company**”)¹, by and through its attorneys, Weil, Gotshal & Manges LLP, responds to the Statement of Additional Material Facts included in the Counterstatement of Controverted Facts in Opposition to Plaintiffs’ Motions for Partial Summary Judgment filed on March 16, 2023 by AG Centre Street Partnership L.P., AG Credit Solutions Non-ECI Master Fund, L.P., AG Super Fund Master, L.P., AG SF Master (L), L.P., and Silver Oak Capital, L.L.C., Contrarian Capital Fund I, L.P., Contrarian Distressed Debt Fund, L.P., and Contrarian Centre Street Partnership, L.P., Gamut Capital SSB, LLC, Z Capital Credit Partners CLO 2018-1 Ltd. and Z Capital Credit Partners CLO 2019-1 Ltd., Shackleton 2013-III CLO, Ltd., Shackleton 2013-IV-R CLO, Ltd., Shackleton 2014-V-R CLO, Ltd., Shackleton 2015-VII-R CLO, Ltd., and Shackleton 2017-XI CLO, Ltd., North Star Debt Holdings, L.P., Ascribe III Investments, LLC, and Cent CLO 21 Limited, Columbia Cent CLO 27 Limited, Columbia Floating Rate Fund, a series of Columbia Funds Series Trust II, and Columbia Strategic Income Fund, a series of Columbia Funds Series Trust I (collectively the “**Drop Down Group Defendants**”).

**DROP DOWN GROUP DEFENDANTS’
STATEMENT OF ADDITIONAL MATERIAL FACTS**

Statement No. 50: The Unlawful Exchange Transaction was not an “open market purchase” within the meaning of Section 9.05(g) of the Credit Agreement. See Murray Decl. ¶¶ 100-129; Ward Decl. ¶¶ 9-13, 73-79; Excluded Lenders’ Br., Exs. A, U-Z.

¹ Capitalized terms used but not otherwise defined herein have the same meaning as defined in Serta Simmons Bedding, LLC’s *Motion for Summary Judgment*. ECF 69.

Response to Statement No. 50: Disputed. The Transaction was an open market purchase expressly permitted by Section 9.05(g) of the Term Loan Agreement. *See* ECF 1 ¶¶ 6, 43-47; ECF 69 at 18-21.

Statement No. 51: The Favored Lenders did not share the proceeds from the Unlawful Exchange Transaction with the Excluded Lenders as required under the pro rata sharing provisions in Section 2.18(c) of the Credit Agreement.

Response to Statement No. 51: Disputed. Section 2.18(c) only requires Lenders to share ratably if that Lender “obtains payment . . . on any of its Loans of any Class . . . resulting in such Lender receiving payment of a greater proportion . . . of its Loans of such Class.” ECF 1-1 § 2.18(c) (emphasis added); *see also id.* § 2.18(a) (providing for pro rata payment only for debt in the same “Class” of the Term Loan Agreement and expressly does not apply to any debt outside the Term Loan Agreement). Since the PTL Loans were entered into pursuant to an entirely separate facility, they are not in the same Class as the First Lien Term Loans. *See* ECF 1 ¶ 54; ECF 69 at 25.

Statement No. 52: Serta recognized that the Unlawful Exchange Transaction would harm its relationship with those lenders who did not participate in the transaction. *See* ECF No. 72-5 (Ex. 6 to Serta Statement of Uncontroverted Facts, June 5, 2020 Slide Deck at slide 12).

Response to Statement No. 52: Disputed. The Transaction was permitted by the Credit Agreement and the Company considered various factors when evaluating the Transaction, including the potential impact on the Company’s relationship with non-participating lenders, among others. *See* ECF No. 72-5.

Statement No. 53: Serta and the Favored Lenders breached the duty of good faith and fair dealing which is implied in the Credit Agreement by using their position as majority lenders to illegally usurp the Excluded Lenders’ rights to collateral that were contractually superior

to all others in the event of a default, and to share ratably in all payments of principal and interest on the loans, thereby destroying the Excluded Lenders' rights to receive the fruits of the Credit Agreement. (See Mollett Decl. ¶¶ 5-16; Ryan Decl. ¶¶ 5-6; Kreutzer Decl. ¶¶ 5-6; Excluded Lenders' Br. Ex. F.)

Response to Statement No. 53: Disputed. The Company and the PTL Lenders did not breach the duty of good faith and fair dealing. *See* ECF 69 at 27.

Dated: New York, New York
March 24, 2023

Respectfully submitted,

/s/ David Lender

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